

DEWEY & LEBOEUF LLP

Harvey Kurzweil
Richard W. Reinthaler
James P. Smith III
William T. Conway III
Jennifer Opheim Whitener
1301 Avenue of the Americas
New York, New York 10019
Telephone: (212) 259-8000
Facsimile: (212) 259-6333

*Attorneys for Defendant Wachovia
Capital Markets, LLC*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

| | |
|-------------------------------------|------------------------|
| ----- X | |
| HARBINGER CAPITAL PARTNERS MASTER | : |
| FUND I, LTD., ET AL., | : |
| | : |
| Plaintiffs, | : 07-CV-08139 (DC) |
| | : |
| -against- | : Hon. Denny Chin |
| | : |
| WACHOVIA CAPITAL MARKETS, LLC D/B/A | : ELECTRONICALLY FILED |
| WACHOVIA SECURITIES, ET AL., | : |
| | : |
| Defendants. | : |
| ----- X | |

SUPPLEMENTAL AFFIRMATION OF HARVEY KURZWEIL

I, Harvey Kurzweil, an attorney duly admitted to practice law in the State of New York, hereby affirm under the penalty of perjury as follows:

1. I am a member in good standing of the Bar of the State of New York and a partner in the law firm of Dewey & LeBoeuf LLP, counsel for Defendant Wachovia Capital Markets, LLC ("WCM") in the above-captioned action. I submit this affirmation in support of WCM's motion, pursuant to Federal Rules of Civil Procedure

12(b)(1) and (6), for an order dismissing, without prejudice, plaintiffs' claims against WCM for conspiracy to violate the Racketeer Influenced and Corrupt Organizations Act ("RICO") pursuant to 18 U.S.C. §1962(d) on ripeness grounds and their pendent state law claims for fraud, aiding and abetting fraud, negligent misrepresentation and civil conspiracy for lack of federal subject matter jurisdiction.

2. Attached hereto as Exhibit A is a true and correct copy of a portion of the Disclosure Statement with Respect to Second Amended Joint Chapter 11 Plan of Liquidation of the Official Committee of Unsecured Creditors, the Ad Hoc Committee of Secured Lenders, and the Ad Hoc Committee of Senior Subordinated Noteholders, filed on November 27, 2007, in the *In Re Le-Nature's* bankruptcy proceedings, Case No. 06-25454, currently pending in the United States Bankruptcy Court for the Western District of Pennsylvania.

3. Attached hereto as Exhibit B is a true and correct copy of the Order Continuing Temporary Restraining Order and Remanding Action, entered in *Wachovia Bank, National Association et al v. Harbinger Capital Partners Master Fund I, Ltd. et al*, Civ. No. 3:07CV123 (W.D.N.C. Mar. 23, 2007).

4. Attached hereto as Exhibit C is a true and correct copy of the North Carolina Business Court docket for the North Carolina action, Case No. 07CVS5097.

Executed on December 11, 2007.

/s/ Harvey Kurzweil